

## Message Text

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ORIGIN ARA-10

INFO OCT-01 EUR-12 ISO-00 ACDA-05 /028 R

66602

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10/7/75 EXT. 21245

APPROVED BY ARA/BR:RWZIMMERMAN

ACDA:RHARKAVY

EUR/CE:KKURZE

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O 071637Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

INFO AMCONSUL RIO DE JANEIRO IMMEDIATE

AMEMBASSY BONN IMMEDIATE

C O N F I D E N T I A L STATE 238548

FOLLOWING REPEAT IAEA VIENNA 8183, SENT SECSTATE, INFO USERDA  
GERMANTOWN, SEPT 24:

QUOTE C O N F I D E N T I A L IAEA VIENNA 8183

E.O. 11652: GDS

TAGS: IAEA, TECH, PARM

SUBJECT: COMMENTS ON DRAFT FRG/BRAZIL/IAEA TRILATERAL SAFE-  
GUARDS AGREEMENT

RF: IAEA VIENNA 8147

1. FRG REPS HANDED DRAFT OF SUBJECT AGREEMENT TO U.S.  
DEL MEMBERS ON SSPTMBER 24, SIGNIFICANT PROVISIONS OF  
WHICH TRANSMITTED REFTEL, FOR ANY COMMENTS WE MIGHT HAVE,  
INDICATING THAT IT "ABOUT 85-90 PERCENT" THE SAME AS  
FRENCH/KOREA/IAEA TRILATERAL SAFEGUARDS AGREEMENT (GOV  
1754). THEY STATED THEY PLANNED GIVE DRAFT TO BRAZILIANS  
FRIDAY AFTERNOON (SEPTEMBER 26), ESTABLISH SCHEDULE FOR  
NEGOTIATIONS DURING MEETING OF FRG/BRAZIL MIXED  
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COMMISSION IN EARLY OCTOBER, AND HOPED TO HAVE AGREEMENT

CONSIDERED BY IAEA BOARD OF GOVERNORS (BG) IN FEBRUARY  
OR POSSIBLY JUNE 1976.

2. U.S. REPS POINTED OUT THIS DID NOT ALLOW MUCH  
TIME TO STUDY DRAFT IN DEPTH AND PROVIDE COMMENTS, AND  
ASKED FOR EXTENSION, AT LEAST UNTIL MONDAY. FRG REPS  
RESPONDED THEY WERE OBLIGATED TO PROVIDE DRAFT TO BRAZILIANS  
BEFORE THSH DEPARTED VIENNA AT END OF THIS WEEK, AND  
OUR COMMENTS SHOULD THEREFORE BE IN FRG HANDS BY  
FRIDAY AFTERNOON.

3. ACTION REQUESTED: WASHINGTON'S COMMENTS BE  
RECEIVED BY MISSION NO LATER THAN NOON FRIDAY,  
SEPTEMBER 26.

4. OUR PRELIMINARY REACTIONS TO DRAFT AS FOLLOWS:  
A. TWENTY YEAR PERIOD DURING WHICH ANY REPLICATED  
PLANT WOULD BE SUBJECT TO IAEA SAFEGUARDS IS SIGNIFICANT  
STEP IN RIGHT DIRECTION. THIS IS SIMILAR TO ARRANGE-  
MENT ADOPTED BY FRENCH AND KOREANS IN SEPARATE UNDER-  
STANDING RELATED TO IMPLEMENTATION OF FRENCH/KOREA/  
IAEA TRILATERAL SAFEGUARDS AGREEMENT. FRG/BRAZIL  
DRAFT PROVIDES THAT 20 YEAR PERIOD STARTS AFTER  
NOTIFICATION TO AGENCY OF INTENT TO TRANSFER FACILITIES,  
EQUIPMENT, MATERIALS OR TECHNOLOGICAL INFORMATION,  
RATHER THAN WHEN SUCH ITEMS ACTUALLY TRANSFERRED.  
THIS COULD DIMINISH VALUE OF 20 YEAR PROVISION IF  
ACTUAL TRANSFERS WERE SIGNIFICANTLY DELAYED AFTER  
NOTIFICATION TO AGENCY. WHEN THIS POINTED OUT TO  
FRG REPS THEY REPLIED THAT, AS PRACTICAL MATTER,  
LONG DELAY BETWEEN NOTIFICATION AND ACTUAL TRANSFERS  
UNLIKELY TO OCCUR.

B. DEFINITION OF "SAME OR SIMILAR PHYSICAL OR  
CHEMICAL PROCESSES SPECIFIED BY CONTRACTING GOVERNMENT  
FROM WHOSE TERRITORY THE RELEVANT TECHNOLOGICAL  
INFORMATION WAS TRANSFERRED" (SEE NUMBERED PARA 4  
REFTEL) IS CURCIAL TO EFFICACY OF SAFEGUARDS AGREE-  
MENT FRG REPS AGREED, POINTING OUT FRG, AS RE-  
FLECTED IN DRAFT, WOULD HAVE CONTROL OVER SUCH  
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DEFINITION IN IMPLEMENTATION ON AGREEMENT.

C. ALTHOUGH DRAFT AGREEMENT CONTAINS COMMIT-  
MENT THAT ITEMS SUBJECT TO AGREEMENT WILL NOT BE  
USED FOR MANUFACTURE OF NUCLEAR WEAPONS OR ANY OTHER  
NUCLEAR EXPLOSIVE DEVICES, IT DOES NOT CONTAIN  
PROHIBITION OF "ANY OTHER MILITARY PURPOSE", AS  
PROVIDED FOR IN INFCIRC/66/REV.2, AS DOES FRENCH/

KOREA/IAEA AGREEMENT. WHEN THIS POINTED OUT TO FRG REPS, THEY REPLIED THAT AS NPT PARTY THEY NOT OBLIGATED UNDER TREATY TO GO BEYOND REQUIRING

PROHIBITION ON NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE IN IAEA SAFEGUARDS AGREEMENTS WITH RECIPIENT COUNTRIES, AND THAT THIS UNFORTUNATE DISCREPANCY BETWEEN INFCIRS/153 AND 66/REV.2.

D. IN RESPONSE TO QUESTION, FRG REPS STATED THAT TRANSFER OF TECHNOLOGICAL INFORMATION THROUGH TRAINING OF BRAZILIANS IN FRG OR THE SERVICES OF FRG EXPERTS IN AREAS OF COOPERATION SET FORTH IN AGREEMENT WOULD NOT SPECIFICALLY BE COVERED BY

TRILATERAL SAFEGUARDS AGREEMENT. ONLY INFORMATION TRANSFERRED IN ACTUAL FACILITIES, EQUIPMENT, MATERIALS OR DOCUMENTS WOULD BE SO COVERED. THEY DEFENDED THIS ON THE GROUNDS THAT THE LATTER TRANSFERS WOULD UNQUESTIONABLY EMCOMPASS THE FACILITIES IN THE AREAS OF TRAINING OR SERVICES PROVIDED AND WOULD THEREFORE BE SUBJECT TO SAFEGUARDS. THEY ALSO INDICATED THAT FRG DOES NOT HAVE LAWS ENABLING THEM TO CONTROL THIS TYPE OF TECHNOLOGY TRANSFER THROUGH INDIVIDUALS. (U.S. REGULATION 10 CFR 110 WAS MENTIONED TO THEM AS A MECHANISM USG EMPLOYS TO CONTROL SUCH TRANSFERS IN AREAS OF CHEMICAL REPROCESSING, URANIUM ENRICHMENT AND HEAVY WATER TECHNOLOGY.)

5. COMMENTS ON OTHER PROVISION OF DRAFT AGREEMENT AS FOLLOWS:

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A. AGREEMENT UNCLEAR AS TO MECHANISM FOR TRIGGERING APPLICATION OF SAFEGUARDS TO FACILITIES, ETC., CONSTRUCTED BOTH DURING AND AFTER INITIAL 20 YEAR PERIOD BASED ON "RELEVANT TECHNOLOGICAL INFORMATION" TRANSFERRED. SECTIONS 4 AND 6(C) (NUMBERED PAGES 5 AND 8, RESPECTIVELY, OR REFTEL) APPEAR TO PROVIDE A BASIS FOR TRIGGERING SAFEGUARDS, BUT RESPONSIBILITY FOR REPORTING SUCH FACILITIES TO AGENCY, RESTS PRINCIPALLY WITH COUNTRY IN WHICH FACILITY EXISTS, RATHER THAN JOINT RESPONSIBILITY OF BOTH GOVERNMENTS. THIS IS POTENTIAL WEAKNESS, SINCE AGENCY WOULD PRESUMABLY HAVE TO TAKE INITIATIVE IN CHALLENGING GOVERNMENT IF IT SUSPECTED A FACILITY CONSTRUCTED, OR BEING CONSTRUCTED, WAS ELIGIBLE FOR SAFEGUARDS. IN CONTRAST, PARA 6(C) OF FRENCH/KOREA/

IAEA AGREEMENT PROVIDED EITHER ROK OR GOF "AFTER CONSULTATION WITH ROK", SHALL INFORM AGENCY WHAT FACILITIES HAVE BEEN

REPLICATED WITH SUPPLIED TECHNOLOGY AND SHOULD THEREFORE BE SUBJECT TO SAFEGUARDS.

B. AGENCY'S UNDERTAKING IN SECTION 4 (NUMBERED PARA 5 REFTEL) IS NOT CLEAR AS TO WHICH "SAFEGUARDS" SHALL BE APPLIED, I.E., INFCIRC/153 OR 66/REV.2, NOR DOES IT SPECIFY THE PURPOSE OF SUCH SAFEGUARDS.

C. ON BASIS OUR PRELIMINARY REVIEW OF PROPOSED AGREEMENT, WE FORESEE, INTER ALIA, SOME POTENTIALLY SERIOUS PROBLEMS FOR AGENCY TO ACCEPT CERTAIN PROVISIONS, IN VIEW STATEMENT IN PARA 5 OF INFCIRC/66/ REV.2 THAT AGENCY WILL NOT RPT NOT ASSUME RESPONSIBILITY FOR ADMINISTERING SAFEGUARDS UNLESS THE PRINCIPLES OF THE SAFEGUARDS AND THE PROCEDURES TO BE USED ARE ESSENTIALLY CONSISTENT WITH THOSE SET FORTH IN INFCIRC/62/ REV.2. FOR EXUMPL, TRANSFERS TO THIRD COUNTRIES WHICH ARE NUCLEAR WEAPON STATES WOULD BE MADE UNDER CONDITIONS CONTRARY TO PROVISIONS SET FORTH IN PARA 28 OR INFCIRC/66/REV.2.TAPE UNQUOTE. KISSINGER

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## Message Attributes

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